Supreme Court, U.S.
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No.

In the Supreme Court of the United States

RICHARD O'HARA,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the court of appeals erroneously departed from sister circuit precedent and the clear meaning and purpose of the Classified Information Procedures Act (18 U.S.C. App. 3, § 1-16) (1980) by holding that the government could invoke the Act after the close of the defense case, where the petitioner never threatened to offer evidence involving national security secrets?

2. Whether the federal Travel Act (18 U.S.C. § 1952) was enacted in order to prosecute a defendant with no organized crime involvement, where the defendant did nothing more than drive on a single occasion, from Chicago to Milwaukee, Wisconsin, and [there] commit an assault on an individual which culminated in both a State prosecution and a subsequent federal Travel Act prosecution for the same offense?

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PETITION FOR WRIT OF CERTIORARI

Richard O'Hara (O'Hara or petitioner), respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit in this case.

OPINION BELOW

The opinion of the court of appeals was filed on August 20, 2002, and is reported at 301 F.3d 563. App., *infra*, 1a-12a. The petitioner did not seek rehearing.

JURISDICTION

The judgment of the court of appeals was entered on August 20, 2002. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTION, STATUTES AND RULES

The Fifth Amendment to the U.S. Constitution, in part, states:

> No person shall be . . . [nor] be deprived of life, liberty or property, without due process of law . . .

The Sixth Amendment to the U.S. Constitution, in part, states:

> In all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

18 U.S.C. App. 3, §§ 1-16 - Classified Information Procedures Act (CIPA-App. *infra*, 13a-36a).

STATEMENT

1. During late May 1984, the *Osservatorio Astronomica di Roma*, located in Rome, Italy was burglarized and several hundred items of historical value were snatched. At issue in petitioner's case were two or three astrolabes—described during trial as ancient navigational instruments used to measure the height of the stars. The observatory burglars have not been apprehended.

2. During 1985 and 1986, Marilyn Karos (Karos), a Milwaukee, Wisconsin, antique dealer consigned and delivered antiques to a Paris, France art/antique dealer. That art dealer provided Karos with a closed container which she did not open for three or four years (until after the Paris antique dealer failed to pay for the [Karos-consigned] antiques). Karos opened the container in about 1989 and discovered a quartet of scientific instruments (which turned out to be astrolabes, Tr. 422-434). Over the next several years she attempted to sell the astrolabes in an effort to regain the monies lost from her failed antique consignment (Tr. 144-48, 441-46-450-55).

3. Petitioner was a long-time antique dealer and the owner of O'Hara's Gallery located at 707 North Wells Street in Chicago. He knew Karos from antique auctions, and from time-to-time they would send one another customers for various antiques/artifacts. During the mid-1990s, petitioner and Karos jointly purchased two valuable Homer Winslow paintings which Karos was trying to sell during 1997 (Tr. 565-66).

4. During the fall of 1997, Karos befriended a Milwaukee con man, Zakria El-Shafei (El-Shafei—age 35 at the time of petitioner's trial—was born in Libya and came to the U.S. when he was 15, Tr. 158). In late September or early October 1997, Karos confided to El-Shafei that she had astrolabes for sale. El-Shafei told Karos that he could

sell the astrolabes for about a half-million dollars to a Saudi Prince. Karos parted with the astrolabes (as it turned out, El-Shafei had no customer for them—but pawned an astrolabe for $7000—Tr. 230-32). After Karos learned of the "pawning" she demanded the return of the astrolabes. El-Shafei declined to return two of the astrolabes because (unbeknown to Karos) he and his attorney, John Sessini, were investigating the possibility of getting a $2 million dollar reward for the astrolabes (Tr. 358-365).

Karos confided her circumstances to the petitioner. She testified that she had persuaded El-Shafei to stop at her home to look at some jewelry during the evening of November 22, 1997 (Tr. 478-79, 595-96). Petitioner, with Messrs. Kozi and Williams, arrived at the Karos home at the same time El-Shafei arrived. Petitioner's plan was to have a *conversation with El-Shafei, hoping to convince him to return the astrolabes to Karos* (Tr. 481-89). The conversation was for naught, a struggle ensued and they ended up in the Karos laundry room. Karos testified that she saw El-Shafei on the floor with petitioner and Kozi standing over him (Tr. 498-502). El-Shafei was able to interrupt the assault and called 911. The police showed up and Karos, clearly fibbing, told the police nothing untoward occurred (Tr. 503). El-Shafei told the police that he was set up and assaulted (never mentioning that the *sine qua non* of the entire assault-event related to the astrolabes he eschewed returning, Tr. 272-73).[1]

Because of the petitioner's decade-long relationship with Karos, he continued pursuing the whereabouts of the missing astrolabes. To that end, he visited with El-Shafei's Mil-

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[1] Both Karos and an investigating police officer testified that El-Shafei did not appear to have been the victim of an assault (Tr. 301-03, 512).

waukee attorney, John Sessini. Petitioner and Sessini had a conversation which Sessini took to be a threat of sorts. Shortly thereafter, Sessini and El-Shafei provided the FBI with the missing astrolabes (Tr. 368-71).

5. During June 2000, O'Hara and Karos were charged by the Milwaukee, Wisconsin county prosecutor with offenses stemming from the November 22, 1997 events at the Karos home (Milwaukee County charges 00 CF 3603 and 3604). Both were admitted to bail and the Milwaukee County charges continued through and including February 19, 2001.

6. On September 7, 2000, petitioner and Karos were charged in the U.S. District Court, Milwaukee, Wisconsin, via grand jury indictment 00 CR 170 in a three-count indictment charging conspiracy to possess and the possession of stolen property in violation of 18 U.S.C. §§ 371 and 2315 (R. 1). Ultimately Karos opted out of the state and federal prosecutions (with a concurrent federal-state plea agreement limiting her custodial exposure to approximately 8 months of federal immurement).

7. Petitioner's federal indictment was set for trial in February 2001, but the trial date was adjourned after the U.S. Attorney, on February 6, 2001, importuned the Milwaukee federal grand jury to return a superseding indictment (adding dual Travel Act counts, R. 40).[2]

8. On Thursday, March 8, 2001, petitioner's jury trial on superseding indictment 00 CR 170 commenced in the U.S. District Court, Milwaukee, Wisconsin (R. 54). On March

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[2] Between February 6 and February 19, 2001, petitioner was being concurrently prosecuted for a November 22, 1997 El-Shafei assault in the Milwaukee county and U.S. District Court. On February 19, the county prosecutor withdrew the State's charges.

12, during a trial recess, the court engaged counsel in a chambers conference during which petitioner's counsel remarked that he had just learned that El-Shafei may have had some interaction on behalf of the United States with Omar Quaddafi (Tr. 571-75). Government counsel claimed no knowledge—but agreed to determine whether any such information existed (Tr. 575).

On March 13, at the conclusion of the defense case (the entire trial, including jury selection, took about 3½ days), the government requested an *in camera/ex parte* meeting with the trial court. After rejecting the defense request to be present, the court met with government trial counsel, and AUSA Paul Kanter (Tr. 855-56). During the late afternoon of March 13, the district court (in chambers) met with all counsel and revealed that there were new disclosures of *Brady*-information involving El-Shafei (Tr. 857). Petitioner took the position that its pretrial discovery filings sought the timely disclosure of all *Brady* exculpatory and impeaching information, and the government's failure to make significant disclosures in a prompt fashion warranted a mistrial (Tr. 860). The government suddenly responded by citing § 4 of the CIPA. Non-plused, petitioner (through counsel—petitioner was excluded) sought either a mistrial or a 30-day continuance (Tr. 862-64). Following another *ex parte* conference with the government, the district court advised petitioner's counsel that "we" are dealing with the CIPA and the court was authorized to review information and provide a jury summary of evidence (citing CIPA, § 4; Tr. 864-65). Petitioner's counsel (having just been advised of the CIPA invocation), pointed out that ¶s 2-5 of the CIPA related to *pretrial discovery* . . . not CIPA intervention after the evidence was closed (Tr. 866). Contentious arguments ensued with the district court noting that the government was unaware of the [FBI] CIPA file and declined to decide disclosure or mistrial, but engaged in further *ex parte* meet-

ings with the government (Tr. 872-74).[3]

On March 14, during another chambers-CIPA argument, the defense asserted that the CIPA contemplates pretrial procedures to determine the admissibility of defense-sponsored evidence implicating national security secrets (Tr. 902-03). The government cited [a] *LaRouche* decision (no citation) in support of its position that CIPA procedures can be invoked during trial. *Id.* at 903.[4] Petitioner's counsel maintained that the CIPA provided a *pretrial* procedure which did not contemplate a jury summary under the circumstances of petitioner's case (Tr. 885-87). The district court presumed the *Brady* material should have been turned over before trial, but the government was acting in good faith and diligently pursued the CIPA information (Tr. 889-90).[5] The district court opined that its reading of the CIPA file failed to disclose any National Security concerns and sought government acquiescence in allowing petitioner's counsel to review the [CIPA-El-Shafei] file. The govern-

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[3] The FBI investigated the entire astrolabe saga and participated in the preparation and filing of the Milwaukee county and federal charges.

[4] Presumptively, the government was alluding to *United States v. LaRouche Campaign*, 695 F.Supp. 1282 (D. Mass. 1988). The reference to *LaRouche* was misleading in that the *LaRouche* opinion notes:

> Pursuant to 18 USC app. § 5, defendants filed a motion *before trial* serving notice of intent to disclose classified information. The government seasonably responded that none of the documents attached to defendants' motion was classified.

695 F.Supp. at 1283-84 (emph. added). Unlike *LaRouche*, there was no hint of CIPA proceedings until the government invoked same after petitioner closed his case.

[5] Government counsel explained that an "open file" policy did not mean that we "open government files," *id.* at Tr. 890.

ment rejected that overture, explaining that the file was not "declassified" (Tr. 890-91). During this chamber conference the defense pointed out that it was not up to the trial judge to determine whether the file content was useful to the defense (Tr. 895). The defense was then presented with two pages of redacted information—which theoretically enabled the defense to advance further investigation. Since the redacted pages provided no names—the defense requested a mistrial (Tr. 898-99; the CIPA chamber conferences were generally transcribed but sealed and presumptively available for this Court's scrutiny).

Although the government declined to "declassify" the file, at the urging of the district court, the names of three individuals who had provided CIPA information regarding El-Shafei were tendered to petitioner's counsel (Tr. 908-944).[6] Again, petitioner's counsel urged plenary disclosure, a mistrial or a 30-day continuance—all rejected by the district court (Tr. 942-43). The district court agreed that if a CIPA summary was utilized, the defense was not waiving its demand for "actual people" (Tr. 950).

On March 19, prior to summations, the district court read the government's El-Shafei substitute-summary to the jury (Tr. 978-79). Summations, jury instructions and deliberations followed. During the afternoon of March 19, 2001, the jury returned mixed verdicts (Tr. 1085-86). Because petitioner had been convicted on a single Travel Act count, his bail was rescinded (Tr. 1091-92).

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[6] The district court's CIPA analysis relied on *United States v. Rahman*, 870 F.Supp. 47 (S.D.N.Y. 1994) (Tr. 913, 936). *Rahman* is inapposite in that it involved the correct approach to CIPA procedures (pretrial resolution regarding the availability of classified information). The Rahman district court CIPA rulings were apparently not challenged on appeal, 189 F.3d 88 (2d Cir. 1999).

9. Petitioner's post-trial filings were for naught and on July 13, 2001, the district court imposed consecutive 5-year sentences.[7] Pertinent to this petition, the court of appeals held that the government's invocation of the CIPA was not statutorily flawed, and the single Travel Act conviction was neither statutorily nor constitutionally flawed (App., *infra*, 4a-10a).

REASONS FOR GRANTING THE PETITION

I.

CLASSIFIED INFORMATION PROCEDURES ACT

1. The court of appeals' holding is erroneous and departs from sister circuit precedent. The court of appeals disregarded reported precedent and considered only CIPA § 4 while rejecting petitioner's CIPA arguments, App., *infra*, 4a-6a.

The CIPA was enacted to address issues which accompany criminal prosecutions where a defendant threatens to expose national security secrets as part of his or her defense (e.g., "graymail"). While this Court has yet to consider the dynamics or contours of the CIPA, given current world events and our ongoing involvement in fending off terrorism, it would seem that NOW is the time for the Court to consider the scope and ramifications of the CIPA.

The framework and background of the CIPA was recently explained by the district court in *United States v. Usama Bin Laden, et al.*:

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[7] The district court took the view that U.S.S.G. § 5G1.2(d) mandated consecutive 5-year sentences for the conspiracy and Travel Act counts.

> CIPA was enacted by Congress in 1980 to address the issues which accompany criminal prosecutions involving national security secrets. In particular, the Act was a response to the problem of "graymail" which arose in prosecuting espionage and criminal leak cases. S.Rep. No. 96-823, 96th Cong., 2d Sess. (1980). A defendant is said to "graymail" the government when he threatens to disclose classified information during a trial and the government is forced to choose between tolerating such disclosure or dismissing the prosecution altogether. See *United States v. Pappas*, 94 F.3d 795 (2d Cir. 1996) (discussing "graymail" and CIPA's legislative history); *United States v. Poindexter*, 725 F.Supp 13, 31 (D.D.C. 1989) (same). In CIPA, Congress established procedures whereby a trial court evaluates *before trial* the admissibility of declassified information which is at issue. CIPA mandates that a defendant who "reasonably expects to disclose" classified information must notify the government and the court *in advance of trial* and must provide a "brief description" of the information. 18 U.S.C. app. 3 § 5. If that defendant fails to provide this notice, the court can preclude the disclosure of the classified information. *Id.* In addition, CIPA provides that, upon the request of the United States, the court "shall conduct" a hearing (usually in camera) *before the start of the trial* to "make all determinations concerning the use, relevance, or admissibility of classified information." 18 U.S.C. App. 3 § 6(a).

2001 WL 66393 at pp. 1-2 (Sand, J.; S.D.N.Y.; 1/25/01; ital. emph. added).[8]

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[8] See Richard P. Salgado, *Government Secrets, Fair Trials, and the Classified Information Procedures Act*, 98 Yale Law Journal 427 (1988) (providing history of CIPA and explaining its pretrial procedures).

In *United States v. Pringle*, 751 F.2d 419 (1984), the First Circuit explored segments of the CIPA explaining, *inter alia*, the "graymail" background which was the reason the CIPA was enacted, 751 F.2d at 427. In part, the court explained:

> The purpose of CIPA is to enable the government to *ascertain prior to trial* the classified information which the *defendant possesses* so that it can evaluate the effect of its disclosure on national security.

Id. at 427 (ital. emph. added). And the Fourth Circuit considered the CIPA in *United States v. Smith*, 780 F.2d 1102 (1985) (on rehearing by the full Court). Smith explained . . . "CIPA established a *pretrial procedure for ruling upon the admissibility of classified information.*" *Id.* at 1105.

The Ninth Circuit examined the CIPA in *United States v. Sarkissian*, 841 F.2d 959 (1988). In part, the court explained:

> Congress passed CIPA to prevent the problem of "graymail," where defendants pressed for the release of classified information to force the government to drop the prosecution. * * * CIPA permits "the trial judge to rule on questions of admissibility involving classified information before introduction of the evidence in open court. This procedure . . . permit[s] the government to ascertain the potential damage to national security of proceeding with a given prosecution *before trial*. * * * CIPA creates a *pretrial procedure* for ruling upon the admissibility of classified information.

Id. at 965 (internal authorities omitted, ital. emph. added).[9]

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[9] The Ninth Circuit later considered the CIPA in *United States v. Klimavicius-Viloria*, 144 F.3d 1249 (1998), *cert. denied, sub nom., Payan-Solis v. United States*, 528 U.S. 842 (1999). In *Klimavicius,* (continued...)

The Eleventh Circuit considered the CIPA in *United States v. Collins,* 720 F.2d 1195 (1983) and *United States v. Johnson*, 139 F.3d 1359 (1998), *cert. denied,* 527 U.S. 1001 (1999). In *Collins*, the court noted, *inter alia,* that the CIPA is a disclosure law "coupled with provisions for resolution of admissibility questions," 720 F.2d at 1199. The *Collins* court also explained:

> Indeed, CIPA appears premised upon the assumption that, if material to the defense and not otherwise avoidable, such information shall be admissible. It does require that the defendant be forthcoming, *before trial*, as to anticipated evidence and, by providing for *pretrial ascertainment* of admissibility, establish a secure method for all parties to know what classified information will actually be—as opposed to vaguely threatened to be—made public if the case proceeds.

Id. at 1199 (ital. emph. added). And in *Johnson* the court noted:

> This Act [CIPA] is designed to ensure that a trial court's evidentiary rulings on the use of classified information are made *prior to trial*. The purpose of the law is to prevent criminal defendants from "graymailing" the government by threatening to reveal irrelevant but sensitive information during trial.

139 F.3d at 1365 (ital. emph. added).

The D.C. Court of Appeals considered segments of the CIPA in *United States v. Yunis*, 867 F.2d 617 (1989). As pertinent to this petition, the court explained:

> Obviously, the government cannot be permitted to convert any run-of-the-mine criminal case into a CIPA

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[9] (...continued)
the Court explained: "CIPA creates a *pretrial procedure* for ruling upon the admissibility of classified information," 144 F.3d at 1260.

> action merely by frivolous claims of privilege. But this creates no problem in the present case. Not only does CIPA itself provide abundant safeguards against abuse, including the statutory *pre-trial conference under 18 U.S.C. App. § 2, * * **.

Id. at 623 (ital. emph. added).

Thus, the courts of appeals for the First, Fourth, Ninth, Eleventh, and D.C. Circuits have conclusively held that the CIPA is an enactment implicating *pretrial proceedings* where a defendant may be seeking to introduce evidence which may impact on national security. Juxtaposing those holdings to the case below, we find that at the close of petitioner's case, the government sought to invoke the CIPA in order to overcome its [*Brady*] pretrial shortcomings. To further explain: The government's primary witness, El-Shafei, had conned any number of individuals in the Milwaukee area out of money, had several civil judgments against him for bad checks, was contemplating scamming Karos out of her astrolabes for potential reward money, and had misrepresented his employment status during proceedings relating to back child support (Tr. 163-64, 225, 227-28, 238, 310-15, 333-38). The federal prosecutors knew, or should have known, that the FBI had a confidential El-Shafei file because apparently, pre-2001, he agreed to provide information relating to Omar Quaddafi. Cf., *Kyles v. Whitley*, 514 U.S. 419, 432, 437, 115 S.Ct. 1555 (1995) (discussing the duties of a prosecutor to disclose favorable information, explaining the existence of the obligation even if police investigators have failed to disclose same to the prosecutor).[10] Since petitioner's counsel has never examined

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[10] The FBI maintained at least one non-national security file which included information from El-Shafei's former spouse regarding his travels to Libya and Tunisia. The government pro-

(continued...)

the "classified" El-Shafei file, he cannot conclusively assert the absence of any information impacting on national security. But the district court, after examining the FBI-CIPA-El-Shafei file, opined that (in his view) it failed to disclose any national security concerns (Tr. 889-891). Notwithstanding the district court's no-national security concerns—the government insisted that neither the petitioner nor counsel have access to same (Tr. 892-95). Petitioner's counsel also contended that whether the file contained material helpful or useful to the defense—was to be determined by defense counsel—not the judge, see *Dennis v. United States*, 384 U.S. 855, 875 (1966) ("In our adversary system, it is enough for judges to judge. The determination of what may be useful to the defense can properly and effectively be made only by an advocate.").[11]

After all was said and done, the district court rejected petitioner's mistrial motion, and granted a two-day recess to ostensibly provide petitioner with time to investigate the presentation of further evidence relating to El-Shafei's background. However, in light of the fact that the CIPA file and the identity of those individuals who could shed light on El-Shafei's background was not disclosed, there was little petitioner's counsel could accomplish during the two-

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[10] (...continued)
vided petitioner with a copy of a letter from El-Shafei's former spouse to the FBI dated March 1, 2001 (R. 56, Exh. 1). Petitioner's counsel did not see a copy of that letter until March 8, 2001 (the morning petitioner's trial commenced).

[11] During the contentious CIPA chamber proceedings, petitioner's counsel accurately recalled language from *United States v. Cleveland*, 507 F.2d 731, 742, n. 17 (7th Cir. 1974), indicating that it is enough for judges to judge. The district court disregarded the *Cleveland* allusion (Tr. 895).

day hiatus.[12] When trial resumed, the district court (over petitioner's objection), read a short CIPA summary to the jury (Tr. 978-79).[13]

Petitioner asserts that the manner in which the district court dealt with the CIPA clearly conflicts with the language, spirit and purpose of the CIPA (to say nothing of sister circuit precedent). This was not a "graymail" case where defense evidence regarding potential national security secrets were ferreted-out in a pretrial setting (per all sister circuit cases). Here, the government simply invoked the CIPA as an end-run because it had failed to look into its own data and files regarding El-Shafei. As the D.C. Circuit explained in *United States v. Yunis*, 867 F.2d 617 (D.C. Cir. 1989):

> Obviously, the government cannot be permitted to convert any run-of-the-mine criminal case into a CIPA action merely by frivolous claims of privilege.

867 F.2d at 623.

Petitioner maintains that given our current "war on terrorism," this petition provides an appropriate opportunity for resolution of the circuit discord (resulting from the

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[12] To add insult to injury, petitioner's counsel understood that the CIPA chamber proceedings were classified and therefore none of those proceedings were disclosed to petitioner until the district court suggested otherwise on Friday, March 16, 2001.

[13] Regarding the district court's use of a summary as a substitution for classified material, see *United States v. Clegg*, 740 F.2d 16 (9th Cir. 1984) (in second government interlocutory appeal divided court held that district court did not abuse its discretion in rejecting government's motion for substitution [of classified information]); *United States v. Fernandez*, 913 F.2d 148, 154-55 (4th Cir. 1990) (district court did not abuse its discretion in rejecting proposed substitution under § 6(c)).

decision below) in connection with the manner in which the lower court should deal with the significant questions which develop when the government invokes the CIPA.[14]

II.

TRAVEL ACT

Petitioner had no organized crime linkage. Further, he was being prosecuted by the Milwaukee County, Wisconsin prosecutor for assaulting El-Shafei during the evening of November 22, 1997 (this event gave rise to the Travel Act—count 4—in the 00 CR 170 February 6, 2001 superseding indictment; petitioner was convicted on count 4 and given a 5-year consecutive sentence).

Most assuredly he drove the 60-odd miles from Chicago to Milwaukee on that single occasion. The trial evidence disclosed that petitioner, along with Messrs. Kozi and Williams, drank five bottles of *Chateau Margot Rothchild* during the late afternoon of November 22 (Tr. 650, 660). Thereafter, petitioner drove Kozi (Williams following in a separate car) to the Karos' home in Milwaukee (there was an intervening stop where petitioner and Kozi drained another bottle of wine). Kozi understood that the *sole* reason for the trip was so that petitioner could talk to the guy who had Karos' property (Tr. 709). During petitioner's trial, Kozi testified that petitioner assaulted El-Shafei at the Karos home using a small bat while his face was par-

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[14] Petitioner is not seeking certiorari on pure due process questions surrounding *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194 (1963) and its progeny, including *Kyles v. Whitley*, 14 U.S. 419, 115 S.Ct. 1555 (1995). To do so would necessarily detract from the CIPA questions herein presented.

tially masked.[15]

Petitioner and Karos were charged by the Milwaukee county prosecutor during June 2000 based on the November 22, 1997 events at the Karos home. During a Milwaukee county preliminary hearing Kozi testified for the State, and thereafter petitioner's case was held over for trial (in other words, there was a probable cause hearing and petitioner was bound over for a later jury trial).

On September 7, 2000, petitioner and Karos were charged in a three-count indictment with conspiracy to possess and the possession of the stolen astrolabes per 00 CR 170 in violation of 18 U.S.C. §§ 371 and 2315 (R. 1).[16] As explained, *ante,* Karos executed a plea agreement and eventually testified against petitioner.

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[15] Kozi was also charged by the Milwaukee County prosecutor with having participated in the El-Shafei assault (Kozi was sentenced to a short term of probation and not federally prosecuted).

During July 2000, Kozi provided the FBI with a lengthy written statement, omitting any mention of petitioner having his face covered with a mask or using a bat during the November 22 melee (Tr. 696); and when Kozi testified as a preliminary hearing prosecution witness in *Wisconsin v. O'Hara*, he said nothing about a mask or bat (Tr. 702-04). And when he testified before the federal grand jury he related that the "plan" was for petitioner *to talk to the guy* and have Kozi present because he looked formidable (Tr. 709, emph. added). The first Kozi related that petitioner had a bat and mask was during this trial.

[16] Count one charged petitioner and Karos with conspiring to possess stolen property in violation of 18 U.S.C. § 371. Overt acts 16-17 in count one incorporated petitioner's travel from Chicago to Milwaukee on November 22, 1997. Count two charged Karos with possessing stolen astrolabes; count three charged both petitioner and Karos with possession of stolen astrolabes in violation of 18 U.S.C. §§ 2315 and 2.

On February 6, 2001, petitioner was charged via superseding indictment with dual Travel Act counts (R. 40; 18 U.S.C. § 1952—leaving the earlier three counts intact). Travel Act count four embraced petitioner's drive from Chicago to Milwaukee (with Mr. Kozi) on November 22, 1997. Travel Act count five charged petitioner with driving to Milwaukee a couple of weeks later where he chatted with Attorney Sessini regarding the missing astrolabes.[17]

The court below affirmed petitioner's Travel Act conviction and consecutive five-year sentence, rejecting petitioner's void-for-vagueness (as applied) arguments in addition to abandoning its own and rejecting this Court's Travel Act jurisprudence. App., *infra*, 7a-10a.

The Travel Act was enacted to combat organized crime and was not enacted to "*curtail the sporadic, casual involvement in these offenses, but rather a continuous course of conduct sufficient for it to be termed a business enterprise*," *Rewis v. United States*, 401 U.S. 308, 811, n. 6, 91 S.Ct. 1056 (1971); *United States v. Nardello*, 393 U.S. 286, 291, 89 S.Ct. 534 (1969) (explaining that the purpose of the Travel Act was to combat organized crime "Because many rackets are conducted by highly organized syndicates whose influence extends over State and National borders, the Federal Government should come to the aid of local law enforcement authorities in an effort to stem such activity. * * * The measure was passed by the Senate and subsequently became § 1952.").

Justice Stevens, prior to Supreme Court ascension, authored a Seventh Circuit Travel Act decision, *United States v.*

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[17] At the close of the government's case the district court granted petitioner's JOA motion and dismissed the astrolabe possession count (count three). The jury acquitted petitioner of traveling to Milwaukee to consult with Attorney Sessini (count five).

Altobella, 442 F.2d 310 (1971). In *Altobella*, [then Circuit Judge] Stevens explained:

> In general, the purpose of the Travel Act was to attack criminal activities extending beyond the borders of one state by providing federal assistance in situations in which local law enforcement was ineffective. * * * Two principal ingredients of the offense were specified: *The kind of unlawful activity characteristically pursued by organized crime*; and the use of interstate facilities in aid of the criminal enterprise.

442 F.2d at 313-14 (nn. 7-8 and authority omitted; ital. emph. added).[18]

It is pristine that petitioner was not involved in organized crime. It is also clear that petitioner's travel was not part of a continuous course of conduct . . . and his drive from Chicago to Milwaukee during the evening of November 22, 1997 was nothing more than [a] sporadic event. See *United States v. Roberson*, 6 F.3d 1088, 1094 (5th Cir. 1993) ("The purpose of the act is clear: it aims to deny those engaged in a criminal business enterprise access to channels of interstate commerce. It is not aimed at individual substantive offenses. Courts considering same unanimously have concluded that the Act is not violated by a single episode of criminal behavior. . . . Evidence of an isolated criminal act, or even sporadic acts, will not suffice,") (nn. 24-27, internal supporting citations omitted).[19] And there is no dispute in this record regarding the capacity of local authorities to

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[18] At n. 10 in *Altobella*, Judge Stevens provided excerpts of the Attorney General's testimony during Senate proceedings which revealed "the [Travel Act] target clearly is organized crime."

[19] The *Roberson* court cited decisions from the Fourth, Ninth, Tenth and Eleventh Circuits supporting the proposition that evidence of an isolated criminal act, or even sporadic acts will not suffice [for federal Travel Act complicity].

fully prosecute petitioner (as evidence[d] by the Milwaukee county charges which were filed in June 2000 for the El-Shafei encounter at the Karos home).

Petitioner's opening brief to the Seventh Circuit contended, *inter alia,* that the Travel Act was ambiguous and challenged its application to petitioner under the void-for-vagueness doctrine "as applied" (Pet's Opg. Brf. at pp. 36-38). While rejecting petitioner's argument(s), the court below departed from its own precedent (*viz*, the ambiguity of the Travel Act) and eschewed addressing the Court's Travel Act cases. Regarding whether the Travel Act is ambiguous, the Seventh Circuit considered that issue in *United States v. Isaacs*, 493 F.2d 1124, 1147 (7th Cir. 1974). While reversing several Travel Act counts, the *Isaacs* court explained that the Travel Act-§ 1952—was, indeed ambiguous (When faced with the task of determining the scope of *an ambiguous criminal statute such as § 1952*, courts have long adhered to the principle that ambiguity * * * must be resolved in favor of lenity.) (quotation marks and internal citations omitted, ital. emph. added). The *Isaac* court also noted that in *Rewis v. United States* the Court declined to accept an expansive interpretation of the Travel Act. *Id.* at 1147.[20] Because of ambiguity and [the Rule of] lenity, the motivated reader may only speculate regarding how the federal government could have divined that petitioner's November 22, 1997 drive from Chicago to Milwaukee fell within the amorphous orbit of the Travel Act.

During 2000 the Court decided *Cleveland v. United States*, 531 U.S. 12, 121 S.Ct. 365 and *Jones v. United States*, 529 U.S. 848, 120 S.Ct. 1904. In *Cleveland*, the Court held that the federal mail fraud statute, 18 U.S.C.

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[20] The *Isaacs* court cited *United States v. Altobella, ante*, as authority for the proposition that the Travel Act has limited application, 493 F.2d at 1147-48.

§ 1341, failed to encompass local permits or licenses for video poker machines. Justice Ginsburg's opinion for the Court included, *inter alia*:

> Absent clear statement by Congress, we will not read the mail fraud statute to place under federal superintendence a vast array of conduct traditionally policed by the State.

531 U.S. at 27. And in *Jones v. United States*, the Court held that every arson-related explosion or fire did not fall within 18 U.S.C. § 844(i). Justice Stevens (joined by Justice Thomas), concurred, explaining:

> It also seems appropriate, however, to emphasize the kinship between our well-established presumption against federal pre-emption of state law, see *Ray v. Atlantic Richfield Co.*, 435 U.S. 151, 157, 98 S.Ct. 988, 55 L.Ed.2d 179 (1978), and our reluctance to "believe Congress intended to authorize federal intervention in local law enforcement in a marginal case such as this." *United States v. Altobella*, 442 F.2d 310, 316 (C.A. 7 1971).

529 U.S. at 859 (petitioner assumes that the citation to *Altobella* was not a citational accident and it therefore has significance within the context of this petition).

Petitioner maintains that the decisions in *Jones* and *Cleveland* (along with *United States v. Morrison*, 529 U.S. 598, 120 S.Ct. 1740 (2000)), signal a trending by the Court in [its] sanctioning of federal prosecutions for "traditionally local crime conduct," *Jones*, 529 U.S. at 858. If that be the case, this petition provides a suitable vehicle for resolving questions surrounding the scope of 18 U.S.C. § 1952. Further, granting review regarding Travel Act questions would ultimately serve to settle the clear conflict between the case below and the contrary Fifth Circuit decision in *United States v. Roberson*, 6 F.3d at 1094, regarding the

scope of the Travel Act (including decisions contrary to the case below cited in *Roberson* at 1094, n. 27). Petitioner maintains that in this case he was subjected to [a] Travel Act prosecution (and a consecutive five-year sentence) for "marginal" conduct which clearly fell within the realm of local law enforcement.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

No. 01-2950

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

RICHARD O'HARA,

Defendant-Appellant.

Appeal from the United States District Court
for the Eastern District of Wisconsin.
No. 00 CR 170—**Lynn S. Adelman**, *Judge.*

ARGUED MAY 28, 2002—DECIDED AUGUST 20, 2002

Before BAUER, POSNER and WILLIAMS, *Circuit Judges.*

BAUER, *Circuit Judge.* Richard O'Hara was convicted of conspiracy to possess stolen property (Count I) and traveling in interstate commerce to commit extortion (Count IV).[1] O'Hara was sentenced to sixty (60) months on each count, to run consecutively, as well as supervised release and a special assessment. On appeal, O'Hara argues that: (1) his due process rights were violated when he was not granted full access to the classified FBI file

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[1] Count I was contained in the original indictment, which was returned on September 6, 2000. Count IV was added in a superseding indictment, returned on February 6, 2001.

on one of the government's witnesses; (2) the district court erred in dismissing his motion for judgment of acquittal on Count IV; and (3) the district court abused its discretion in imposing consecutive sentences. We find each of these arguments to be without merit.

Background

O'Hara, an antique art dealer from Chicago, had an ongoing business and sometimes romantic relationship with Marilyn Karos, a Milwaukee art dealer, beginning in about 1991. In the mid to late 1980's, Karos received four antique scientific instruments—three astrolabes and one armillary sphere—as collateral in an independent transaction. Some time later, after researching the origin and worth of the collateral, Karos became aware that at least some if not all of it was stolen.

In 1997, Karos met Zakria El-Shafei. Karos hired El-Shafei to assist her in selling various antique and art works. Among the items Karos asked El-Shafei to sell were some valuable paintings, whose purchase had been financed by O'Hara, and, eventually, the astrolabes and armillary sphere. El-Shafei's lack of success in selling either the paintings and/or scientific instruments became a source of frustration for both Karos and O'Hara.

Karos really became upset upon learning that El-Shafei pawned one of the astrolabes at a jewelry store. She confronted El-Shafei, who returned only some of the items that she had given him to sell. Karos then spoke to O'Hara about the problems she was having with El-Shafei. O'Hara offered to speak to El-Shafei himself in an effort to get the rest of the items back.

After plans to meet with El-Shafei in Chicago failed, O'Hara decided to travel to Milwaukee to confront El-Shafei. O'Hara asked two associates, whose presence he

felt would intimidate El-Shafei, to join him. On November 22, 1997, O'Hara and the two men met at his Chicago gallery, drank alcohol, and then drove to Milwaukee. On arriving in Milwaukee, O'Hara and the two men met Karos at a public rendezvous point, from where they all proceeded to Karos's residence.

That night, Karos invited El-Shafei to her home. El-Shafei arrived at Karos's house at approximately 8:00 p.m. and followed her into the basement where he was assaulted by O'Hara and the two men. After a struggle, El-Shafei managed to break free and call 911. When the police arrived, El-Shafei informed them that he had been assaulted by three men, one of whom wore a mask and beat him with a baseball bat. The bat wielder was later identified as O'Hara.

On September 6, 2000, a grand jury returned a three-count indictment charging Karos and O'Hara with violations of 18 U.S.C. §§ 371 (conspiracy to possess stolen goods) and 2315 (possession of stolen goods). A superseding indictment was returned on February 6, 2001, adding two counts of violating 18 U.S.C. § 1952 (interstate travel to commit extortion) against O'Hara.

During trial, the defense counsel brought to the court's attention that potential *Brady* information contained in FBI reports concerning prosecution witness El-Shafei had not been disclosed in response to pretrial discovery requests. The government denied any knowledge of this material and was instructed by the court to contact the FBI. After looking further into the matter, the government requested and was granted an *ex parte* communication with the court to discuss the material in El-Shafei's FBI file. Following this *ex parte* communication (which was taped and sealed) the court advised counsel for the defense that El-Shafei's file did contain some information it deemed *Brady* material to which the defense was en-

titled. However, the court determined that disclosure of the *Brady* material implicated the Classified Information Procedures Act ("CIPA").

Pursuant to CIPA, the district court then reviewed El-Shafei's file *in camera*. The court found that the majority of the information contained therein was not *Brady* material and had no likelihood of impacting the trial. The court identified ten statements that he felt should be disclosed under *Brady* and the government agreed to declassify the identified material, which was placed under protective order.[2] The defense was granted a continuance until March 19, 2001, in order to investigate and call witnesses (the sources for three of the statements were declassified) based on the newly disclosed information.

When the trial resumed, O'Hara elected not to call any witnesses. On March 19, 2001, O'Hara was found guilty of conspiring to possess stolen property (Count I) and traveling in interstate commerce to commit extortion (Count IV). He was sentenced to a total term of 120 months.

Discussion

A) CIPA and Disclosure of Brady Material

As an initial matter, O'Hara argues that any reliance by the government and/or court on CIPA was misplaced because the classified material in question had been discovered after the commencement of trial.

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[2] Of the ten statements provided to the defense as *Brady* material, the court read statement numbers 2, 4, 7, and 9, as well as the first sentence of statement number 3 to the jury. Names and other identifying information were not revealed. Rather, sources were generally identified where appropriate (*e.g.*, "former girlfriend").

We do not agree that CIPA is limited to pretrial proceedings. We review questions of statutory construction and interpretation *de novo*. *Masters v. Hesston Corp.*, 291 F.3d 985, 989 (7th Cir. 2002). Section 4 of CIPA reads:

> The court, upon a sufficient showing, may authorize the United States to delete specified items of classified information from documents to be made available to the defendant through discovery under the Federal Rules of Criminal Procedure, to substitute a summary of the information for such classified documents, or to substitute a statement admitting relevant facts that the classified information would tend to prove. The court may permit the United States to make a request for such authorization in the form of a written statement to be inspected by the court alone. If the court enters an order granting relief following such an ex parte showing, the entire text of the statement of the United States shall be sealed and preserved in the records of the court to be made available to the appellate court in the event of an appeal.

18 U.S.C. App. 3 § 4. Nothing in section 4 nor elsewhere in CIPA limits its invocation and use to pretrial proceedings. To the contrary, when read in its entirety, CIPA contains repeated references to trial as well as pretrial proceedings. CIPA's plain terms evidence Congress's intent to protect classified information from unnecessary disclosure at any stage of a criminal trial. Any other interpretation would be wholly inconsistent with and threaten to undermine CIPA's fundamental purpose—protecting and restricting the discovery of classified information in a way that does not impair the defendant's right to a fair trial. The district court acted within its authority when it relied on section 4 in determining whether the potential *Brady* material in El-Shafei's FBI file was "classified," as

that term is defined by CIPA.[3]

We next turn to the question of whether the timing and manner of disclosing El-Shafei's FBI file amounted to a *Brady* violation. We review the district court's ruling regarding disclosure of claimed *Brady* material, made after an *in camera* review pursuant to CIPA, for an abuse of discretion. *United States v. Plescia*, 48 F.3d 1452, 1457 (7th Cir. 1995). "When a criminal defendant seeks access to confidential . . . files, we rely particularly heavily on the sound discretion of the trial judge to protect the rights of the accused as well as the government." *Id.*

There are three components to a *Brady* violation: (1) the evidence at issue is favorable to the accused because it is either exculpatory or impeaching; (2) the evidence has been suppressed by the government, either willfully or inadvertently; and (3) the suppressed evidence resulted in prejudice. *Strickler v. Greene*, 527 U.S. 263, 281-82 (1999). "[T]here is never a real '*Brady* violation' unless the nondisclosure was so serious that there is a reasonable probability that the suppressed evidence would have produced a different verdict." *Id.* at 281. Moreover, evidence for *Brady* purposes is deemed "suppressed" if (1) the prosecution failed to disclose the evidence before it was too late for the defendant to make use of the evidence, and (2) the evidence was not otherwise available to the defendant through the exercise of reasonable diligence. *Boss v. Pierce*, 263 F.3d 734, 739 (7th Cir. 2001), *cert. denied*, ___ U.S. ___, 122 S. Ct. 1961 (2002).

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[3] "Classified information" is "any information or material that has been determined by the United States Government pursuant to Executive order, statute, or regulation, to require protection against unauthorized disclosure for reasons of national security and any restricted data, as defined in paragraph r. of section 11 of the Atomic Energy Act of 1954 . . . ." 18 U.S.C. App. 3 § 1.

The evidence at issue here was not suppressed at all. Though discovered during trial, O'Hara had sufficient time to make use of the material disclosed. Delayed disclosure of evidence does not in and of itself constitute a *Brady* violation. *United States v. Walton*, 217 F.3d 443, 450-51 (7th Cir. 2000); *United States v. Higgins*, 75 F.3d 332, 335 (7th Cir. 1996). The government acted promptly to ensure *Brady* compliance once the evidence was discovered, and the court proceeded cautiously to avoid prejudice and ensure compliance with applicable law. O'Hara was provided all information the court concluded to be *Brady* material after *in camera* review.[4] He was also appropriately granted a continuance to further investigate and determine if the preparation and presentation of additional witnesses was necessary. *Walton*, 217 F.3d at 450-51 (noting continuance as an appropriate remedy for belated disclosure); *United States v. Kelly*, 14 F.3d 1169, 1176 (7th Cir. 1994) (same). No *Brady* violation occurred; any evidence potentially favorable to O'Hara on the issue of El-Shafei's credibility was disclosed with plenty of time for him to make use of the information.

B) Travel Act

We review the district court's denial of O'Hara's motion for judgment of acquittal on Count IV *de novo*. *United States v. Griffin*, 194 F.3d 808, 816 (7th Cir. 1999). A motion for judgment of acquittal should only be granted if there is insufficient evidence to sustain the conviction. *United States v. Jones*, 222 F.3d 349, 351-52 (7th Cir. 2000) (citing Federal Rule of Criminal Procedure

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[4] After reviewing the confidential and sealed record, we are satisfied with the district court's *Brady* analysis.

29(a)). In considering the sufficiency of the evidence, we view the evidence in the light most favorable to the prosecution and will overturn a conviction only if the record contains no evidence on which a rational jury could have returned a guilty verdict.

Count IV charged O'Hara with violating the Travel Act, 18 U.S.C. § 1952, which prohibits travel in interstate commerce with the intent of promoting or engaging in extortion in violation of state law. *See* 18 U.S.C. § 1952(b)(2) (defining the term "unlawful activity" to include extortion under state law). O'Hara first argues that the Travel Act is unconstitutionally ambiguous. We disagree.

"[T]he void-for-vagueness doctrine requires that a penal statute define the criminal offense with sufficient definitiveness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement." *United States v. Collins*, 272 F.3d 984, 988 (7th Cir. 2001), *cert. denied*, ___ U.S. ___, 122 S. Ct. 1938 (2002) (citations omitted). The goal of the void-for-vagueness doctrine is to ensure that defendants are given "fair and reasonable warning." *United States v. Pitt-Des Moines, Inc.*, 168 F.3d 976, 987 (7th Cir. 1999). Where, as here, the constitutional challenge for vagueness involves no First Amendment issue, we evaluate it in light of the statute's application to the facts of the case. *Collins*, 272 F.3d at 988.

We believe that O'Hara had more than fair and reasonable warning that his conduct was violative of the Travel Act. The Act plainly prohibits crossing state lines to promote or engage in extortion. O'Hara did just that. He traveled interstate between Milwaukee and Chicago for the *sole purpose* of threatening and assaulting El-Shafei in an attempt to extort the stolen goods that were in El-Shafei's possession. Without question, the terms of the Act provide due notice that such conduct is illegal.

Despite the Travel Act's clear prohibition against the extortionist activity in which O'Hara engaged, O'Hara goes on to argue that the Act is nonetheless inapplicable to his conduct because it is limited to combating organized crime. While we have recognized that the kind of unlawful activity the Act seeks to curtail is often and/or characteristically pursued by organized crime, nothing in the Act or the decisions of this Court imposes such a blanket limitation. Indeed, we have approved use of the Travel Act to obtain a conviction outside the context of organized crime where the use of interstate travel related "significantly, rather than incidentally or minimally, to the illegal activity." *United States v. McNeal*, 77 F.3d 938, 944 (7th Cir. 1996) (citations omitted). So long as the evidence presented establishes such a relation and otherwise satisfies the elements of a section 1952 violation, as it did in this case, a conviction under the Travel Act may be obtained regardless of the defendant's involvement or lack thereof in organized crime.[5]

Lastly, O'Hara argues that adding Count IV in the February 6 superseding indictment amounted to vindic-

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[5] The Seventh Circuit pattern jury instructions define the elements of a section 1952 offense as follows:

> First, the defendant traveled or caused another to travel in interstate or foreign commerce . . .;
>
> Second, the defendant did so with the intent to . . . commit a crime of violence to further unlawful activity . . .; and
>
> Third, thereafter the defendant did commit or attempt to commit a crime of violence to further unlawful activity; promote, manage, establish, carry on an unlawful activity; facilitate the promotion, management, establishment, or carrying on of an unlawful activity; attempt to facilitate the promotion, management, or carrying on of an unlawful activity.

tive prosecution. A defendant seeking to prove prosecutorial vindictiveness for a decision to indict must present objective evidence showing genuine vindictiveness. *United States v. Spears*, 159 F.3d 1081, 1086 (7th Cir. 1998). O'Hara claims that the decision to supersede was made because he challenged the court's jurisdiction over the original indictment. The government responds that the decision was prompted when a previously unavailable witness agreed to provide testimony that made the Travel Act count a viable alternative. In light of the prosecution's reasonable explanation, O'Hara's claim of vindictiveness fails.

C) Consecutive Sentences

The district court's interpretation of the sentencing guidelines is reviewed *de novo*, and its decision to impose consecutive sentences is reviewed for an abuse of discretion. *United States v. Petty*, 132 F.3d 373, 381 (7th Cir. 1997); *United States v. Brassell*, 49 F.3d 274, 279 (7th Cir. 1995).

Section 5G1.2(d) of the 2000 United States Sentencing Guidelines ("USSG"), which were used by the district court, provides: "[I]f the sentence imposed on the count carrying the highest statutory maximum is less than the total punishment, then the sentence imposed on one or more of the other counts shall run consecutively, but only to the extent necessary to produce a combined sentence equal to the total punishment." U.S.S.G. § 5G.2(d). Operating under this guideline, the district court imposed a consecutive sentence of sixty (60) months for each count (the statutory maximum), which is less than the total punishment of 151-188 months permissible under the USSG. The district court's reliance on and application of section 5G1.2(d) was correct. *See, e.g., United States v. Maggi*, 44 F.3d 478, 481 (7th Cir. 1995) (finding imposi-

tion of consecutive sentences "to produce a combined sentence" that is as near as possible to the total punishment allowed for by statute proper under section 5G1.2(d)).

O'Hara contends that the imposition of consecutive sentences was error because section 5G1.2(d) conflicts with applicable sentencing statutes. In particular, he asserts that section 5G1.2(d) mandates the imposition of consecutive terms, whereas 18 U.S.C. § 3584(a) creates a presumption in favor of concurrent sentences that can only be rebutted by applying a series of factors set forth in 18 U.S.C. § 3553(a). The gist of O'Hara's argument is that because the statute controls, the district court's failure to apply or rely on the section 3553(a) factors at sentencing undermines its imposition of consecutive terms under 5G1.2(d).

In *United States v. Schaefer*, 107 F.3d 1280 (7th Cir. 1997), this Court held that where there is a conflict between the imposition of consecutive sentences under the USSG and the possibility of concurrent terms under sections 3584 and 3553, that conflict is to be resolved by allowing the sentencing court to maintain *discretion* to depart downward. 107 F.3d at 1285. Where, as here, the record indicates that the district court was well aware of its discretion to disregard the mandates of section 5G1.2(d) and impose a concurrent sentence on O'Hara, but chose not to do so after evaluating the circumstances of the case, there is no reversible error.

Equally unavailing is O'Hara's argument that the district court's reliance on section 5G1.2(d), which allows for sentencing increases based on aggravating circumstances (*e.g.*, use of a weapon, serious bodily injury), constituted an *Apprendi* violation. Because a sentence imposed under section 5G1.2(d) cannot exceed the statutory maximum, its allowance for an offense level increase based on aggravating factors does not result in an *Apprendi* violation. *See*,

e.g., *United States v. Parolin*, 239 F.3d 922, 930 (7th Cir. 2001), *cert. denied*, 533 U.S. 923 (2001); *Talbott v. Indiana*, 226 F.3d 866, 869-70 (7th Cir. 2000).

Conclusion

We AFFIRM the decision of the district court in all respects.

APPENDIX 3

CLASSIFIED INFORMATION PROCEDURES ACT

Pub.L. 96-456, Oct. 15, 1980, 94 Stat. 2025

Sec.

1. Definitions.
2. Pretrial conference.
3. Protective orders.
4. Discovery of classified information by defendants.
5. Notice of defendant's intention to disclose classified information.
6. Procedure for cases involving classified information.
7. Interlocutory appeal.
8. Introduction of classified information.
9. Security procedures.
9A. Coordination requirements relating to the prosecution of cases involving classified information.
10. Identification of information related to national defense.
11. Amendments to Act.
12. Attorney General guidelines.
13. Reports to Congress.
14. Functions of Attorney General exercised by Deputy Attorney General, the Associate Attorney General, or designated Assistant Attorney General.
15. Effective date.
16. Short title.

§ 1. Definitions

(a) "Classified information", as used in this Act, means any information or material that has been determined by the United States Government pursuant to an Executive order, statute, or regulation, to require protection against unauthorized disclosure for reasons of national security and any restricted data, as defined in paragraph r. of section 11 of the Atomic Energy Act of 1954 (42 U.S.C. 2014(y)).

(b) "National security", as used in this Act, means the national defense and foreign relations of the United States.

(Pub.L. 96-456 § 1, Oct. 15, 1980, 94 Stat. 2025.)

HISTORICAL AND STATUTORY NOTES

References in Text

This Act, referred to in text, is Pub.L. 96-456, Oct. 15, 1980, 94 Stat. 2025, known as the "Classified Information Procedures Act".

§ 2. Pretrial conference

At any time after the filing of the indictment or information, any party may move for a pretrial conference to consider matters relating to classified information that may arise in connection with the prosecution. Following such motion, or on its own motion, the court shall promptly hold a pretrial conference to establish the timing of requests for discovery, the provision of notice required by section 5 of this Act, and the initiation of the procedure established by section 6 of this Act. In addition, at the pretrial conference the court may consider any matters which relate to classified information or which may promote a fair and expeditious trial. No admission made by the defendant or by any attorney for the defendant at such a conference may be

used against the defendant unless the admission is in writing and is signed by the defendant and by the attorney for the defendant.

(Pub.L. 96-456, § 2, Oct. 15, 1980, 94 Stat. 2025.)

§ 3. Protective orders

Upon motion of the United States, the court shall issue an order to protect against the disclosure of any classified information disclosed by the United States to any defendant in any criminal case in a district court of the United States.

(Pub.L. 96-456, § 3, Oct. 15, 1980, 94 Stat. 2025.)

§ 4. Discovery of classified information by defendants

The court, upon a sufficient showing, may authorize the United States to delete specified items of classified information from documents to be made available to the defendant through discovery under the Federal Rules of Criminal Procedure, to substitute a summary of the information for such classified documents, or to substitute a statement admitting relevant facts that the classified information would tend to prove. The court may permit the United States to make a request for such authorization in the form of a written statement to be inspected by the court alone. If the court enters an order granting relief following such an ex parte showing, the entire text of the statement of the United States shall be sealed and preserved in the records of the court to be made available to the appellate court in the event of an appeal.

§ 5. Notice of defendant's intention to disclose classified information

(a) Notice by defendant

If a defendant reasonably expects to disclose or to cause the disclosure of classified information in any manner in connection with any trial or pretrial proceeding involving the criminal prosecution of such defendant, the defendant shall, within the time specified by the court or, where no time is specified, within thirty days prior to trial, notify the attorney for the United States and the court in writing. Such notice shall include a brief description of the classified information. Whenever a defendant learns of additional classified information he reasonably expects to disclose at any such proceeding, he shall notify the attorney for the United States and the court in writing as soon as possible thereafter and shall include a brief description of the classified information. No defendant shall disclose any information known or believed to be classified in connection with a trial or pretrial proceeding until notice has been given under this subsection and until the United States has been afforded a reasonable opportunity to seek a determination pursuant to the procedure set forth in section 6 of this Act, and until the time for the United States to appeal such determination under section 7 has expired or any appeal under section 7 by the United States is decided.

(b) Failure to comply

If the defendant fails to comply with the requirements of subsection (a) the court may preclude disclosure of any classified information not made the subject of notification and may prohibit the examination by the defendant of any witness with respect to any such information.

(Pub.L. 96-456, § 5, Oct. 15, 1980, 94 Stat. 2026.)

§ 6. Procedure for cases involving classified information

(a) Motion for hearing

Within the time specified by the court for the filing of a motion under this section, the United States may request the court to conduct a hearing to make all determinations concerning the use, relevance, or admissibility of classified information that would otherwise be made during the trial or pretrial proceeding. Upon such a request, the court shall conduct such a hearing. Any hearing held pursuant to this subsection (or any portion of such hearing specified in the request of the Attorney General) shall be held in camera if the Attorney General certifies to the court in such petition that a public proceeding may result in the disclosure of classified information. As to each item of classified information, the court shall set forth in writing the basis for its determination. Where the United States' motion under this subsection is filed prior to the trial or pretrial proceeding, the court shall rule prior to the commencement of the relevant proceeding.

(b) Notice

(1) Before any hearing is conducted pursuant to a request by the United States under subsection (a), the United States shall provide the defendant with notice of the classified information that is at issue. Such notice shall identify the specific classified information at issue whenever that information previously has been made available to the defendant by the United States. When the United States has not previously made the information available to the defendant in connection with the case, the information may be described by generic category, in such form as the court may approve, rather than by identification of the specific information of concern to the United States.

(2) Whenever the United States requests a hearing under subsection (a), the court, upon request of the defendant, may order the United States to provide the defendant, prior to trial, such details as to the portion of the indictment or information at issue in the hearing as are needed to give the defendant fair notice to prepare for the hearing.

(c) Alternative procedure for disclosure of classified information

(1) Upon any determination by the court authorizing the disclosure of specific classified information under the procedures established by this section, the United States may move that, in lieu of the disclosure of such specific classified information, the court order—

(A) the substitution for such classified information of a statement admitting relevant facts that the specific classified information would tend to prove; or

(B) the substitution for such classified information of a summary of the specific classified information.

The court shall grant such a motion of the United States if it finds that the statement or summary will provide the defendant with substantially the same ability to make his defense as would disclosure of the specific classified information. The court shall hold a hearing on any motion under this section. Any such hearing shall be held in camera at the request of the Attorney General.

(2) The United States may, in connection with a motion under paragraph (1), submit to the court an affidavit of the Attorney General certifying that disclosure of classified information would cause identifiable damage to the national security of the United States and explaining the basis for the classification of such information. If so requested by the United States, the court shall examine such affidavit in camera and ex parte.

(d) Sealing of records of in camera hearings

If at the close of an in camera hearing under this Act (or any portion of a hearing under this Act that is held in camera) the court determines that the classified information at issue may not be disclosed or elicited at the trial or pretrial proceeding, the record of such in camera hearing shall be sealed and preserved by the court for use in the event of an appeal. The defendant may seek reconsideration of the court's determination prior to or during trial.

(e) Prohibition on disclosure of classified information by defendant, relief for defendant when United States opposes disclosure

(1) Whenever the court denies a motion by the United States that it issue an order under subsection (c) and the United States files with the court an affidavit of the Attorney General objecting to disclosure of the classified information at issue, the court shall order that the defendant not disclose or cause the disclosure of such information.

(2) Whenever a defendant is prevented by an order under paragraph (1) from disclosing or causing the disclosure of classified information, the court shall dismiss the indictment or information; except that, when the court determines that the interests of justice would not be served by dismissal of the indictment or information, the court shall order such other action, in lieu of dismissing the indictment or information, as the court determines is appropriate. Such action may include, but need not be limited to—

(A) dismissing specified counts of the indictment or information;

(B) finding against the United States on any issue as to which the excluded classified information relates; or

(C) striking or precluding all or part of the testimony of a witness.

An order under this paragraph shall not take effect until the court has afforded the United States an opportunity to appeal such order under section 7, and thereafter to withdraw its objection to the disclosure of the classified information at issue.

(f) Reciprocity

Whenever the court determines pursuant to subsection (a) that classified information may be disclosed in connection with a trial or pretrial proceeding, the court shall, unless the interests of fairness do not so require, order the United States to provide the defendant with the information it expects to use to rebut the classified information. The court may place the United States under a continuing duty to disclose such rebuttal information. If the United States fails to comply with its obligation under this subsection, the court may exclude any evidence not made the subject of a required disclosure and may prohibit the examination by the United States of any witness with respect to such information.

(Pub.L. 96-456, § 6. Oct. 15, 1980, 94 Stat. 2026.)

HISTORICAL AND STATUTORY NOTES

References in Text

This Act, referred to in subsec. (d), is Pub.L. 96-456, Oct. 15. 1980, 94 Stat. 2025, known as the "Classified Information Procedures Act".

§ 7. Interlocutory appeal

(a) An interlocutory appeal by the United States taken before or after the defendant has been placed in jeopardy shall lie to a court of appeals from a decision or order of a district court in a criminal case authorizing the disclosure

of classified information, imposing sanctions for nondisclosure of classified information, or refusing a protective order sought by the United States to prevent the disclosure of classified information.

(b) An appeal taken pursuant to this section either before or during trial shall be expedited by the court of appeals. Prior to trial, an appeal shall be taken within ten days after the decision or order appealed from and the trial shall not commence until the appeal is resolved. If an appeal is taken during trial, the trial court shall adjourn the trial until the appeal is resolved and the court of appeals (1) shall hear argument on such appeal within four days of the adjournment of the trial, (2) may dispense with written briefs other than the supporting materials previously submitted to the trial court, (3) shall render its decision within four days of argument on appeal, and (4) may dispense with the issuance of a written opinion in rendering its decision. Such appeal and decision shall not affect the right of the defendant, in a subsequent appeal from a judgment of conviction, to claim as error reversal by the trial court on remand of a ruling appealed from during trial.

(Pub.L. 96-456, § 7, Oct. 15, 1980, 94 Stat. 2028.)

§ 8. Introduction of classified information

(a) Classification status

Writings, recordings, and photographs containing classified information may be admitted into evidence without change in their classification status.

(b) Precautions by court

The court, in order to prevent unnecessary disclosure of classified information involved in any criminal proceeding, may order admission into evidence of only part of a writing, recording, or photograph, or may order admission into evi-

dence of the whole writing, recording, or photograph with excision of some or all of the classified information contained therein, unless the whole ought in fairness be considered.

(c) Taking of testimony

During the examination of a witness in any criminal proceeding, the United States may object to any question or line of inquiry that may require the witness to disclose classified information not previously found to be admissible. Following such an objection, the court shall take such suitable action to determine whether the response is admissible as will safeguard against the compromise of any classified information. Such action may include requiring the United States to provide the court with a proffer of the witness' response to the question or line of inquiry and requiring the defendant to provide the court with a proffer of the nature of the information he seeks to elicit.

(Pub.L. 96-456, § 8, Oct. 15, 1980, 94 Stat. 2028.)

§ 9. Security procedures

(a) Within one hundred and twenty days of the date of the enactment of this Act, the Chief Justice of the United States, in consultation with the Attorney General, the Director of Central Intelligence, and the Secretary of Defense, shall prescribe rules establishing procedures for the protection against unauthorized disclosure of any classified information in the custody of the United States district courts, courts of appeal, or Supreme Court. Such rules, and any changes in such rules, shall be submitted to the appropriate committees of Congress and shall become effective forty-five days after such submission.

(b) Until such time as rules under subsection (a) first become effective, the Federal courts shall in each case in-

volving classified information adopt procedures to protect against the unauthorized disclosure of such information.

(Pub.L. 96-456, § 9, Oct. 15, 1980, 94 Stat. 2029.)

HISTORICAL AND STATUTORY NOTES

References in Text

The date of the enactment of this Act, referred to in subsec. (a), means Oct. 15, 1980.

SECURITY PROCEDURES ESTABLISHED PURSUANT TO PUB.L. 96-456, 94 STAT. 2025, BY THE CHIEF JUSTICE OF THE UNITED STATES FOR THE PROTECTION OF CLASSIFIED INFORMATION

1. Purpose. The purpose of these procedures is to meet the requirements of Section 9(a) of the Classified Information Procedures Act of 1980. Pub.L. 96-456, 94 Stat. 2025, which in pertinent part provides that:

> ". . . [T]he Chief Justice of the United States, in consultation with the Attorney General, the Director of Central Intelligence, and the Secretary of Defense, shall prescribe rules establishing procedures for the protection against unauthorized disclosure of any classified information in the custody of the United States district courts, courts of appeal, or Supreme Court. . . ."

These procedures apply in all proceedings in criminal cases involving classified information, and appeals therefrom, before the United States district courts, the courts of appeal and the Supreme Court.

2. Court Security Officer. In any proceeding in a criminal case or appeal therefrom in which classified information is within, or reasonably expected to be within, the custody of the court, the court shall designate a court

security officer. The Attorney General or the Department of Justice Security Officer, with the concurrence of the head of the agency or agencies from which the classified information originates, or their representatives, shall recommend to the court persons qualified to serve as court security officer. The court security officer shall be selected from among those persons so recommended.

The court security officer shall be an individual with demonstrated competence in security matters, and shall, prior to designation, have been certified to the court in writing by the Department of Justice Security Officer as cleared for the level and category of classified information that will be involved. The court security officer may be an employee of the Executive Branch of the Government detailed to the court for this purpose. One or more alternate court security officers, who have been recommended and cleared in the manner specified above, may be designated by the court as required. The court security officer shall be responsible to the court for document, physical, personnel and communications security, and shall take measures reasonably necessary to fulfill these responsibilities. The court security officer shall notify the court and the Department of Justice Security Officer of any actual, attempted, or potential violation of security procedures.

3. Secure Quarters. Any *in camera* proceeding—including a pretrial conference, motion hearing, or appellate hearing—concerning the use, relevance, or admissibility of classified information, shall be held in secure quarters recommended by the court security officer and approved by the court. The secure quarters shall be located within the Federal courthouse, unless it is determined that none of the quarters available in the courthouse meets, or can reasonably be made equivalent to, security requirements of the Executive Branch applicable to the level and category of classified information involved. In that event, the court shall designate the facilities of another United States Gov-

ernment agency, recommended by the court security officer, which is located within the vicinity of the courthouse, as the site of the proceedings.

The court security officer shall make necessary arrangements to ensure that the applicable Executive Branch standards are met and shall conduct or arrange for such inspection of the quarters as may be necessary. The court security officer shall, in consultation with the United States Marshal, arrange for the installation of security devices and take such other measures as may be necessary to protect against any unauthorized access to classified information. All of the aforementioned activity shall be conducted in a manner which does not interfere with the orderly proceedings of the court. Prior to any hearing or other proceeding, the court security officer shall certify in writing to the court that the quarters are secure.

4. Personnel Security—Court Personnel. No person appointed by the court or designated for service therein shall be given access to any classified information in the custody of the court, unless such person has received a security clearance as provided herein and unless access to such information is necessary for the performance of an official function. A security clearance for justices and judges is not required, but such clearance shall be provided upon the request of any judicial officer who desires to be cleared.

The court shall inform the court security officer or the attorney for the government of the names of court personnel who may require access to classified information. That person shall then notify the Department of Justice Security Officer, who shall promptly make arrangements to obtain any necessary security clearances and shall approve such clearances under standards of the Executive Branch applicable to the level and category of classified information involved. The Department of Justice Security Officer shall advise the court in writing when the necessary security clearances have been obtained.

If security clearances cannot be obtained promptly, personnel in the Executive Branch having the necessary clearances may be temporarily assigned to assist the court. If a proceeding is required to be recorded and an official court reporter having the necessary security clearance is unavailable, the court may request the court security officer or the attorney for the government to have a cleared reporter from the Executive Branch designated to act as reporter in the proceedings. The reporter so designated shall take the oath of office as prescribed by 28 U.S.C. § 753(a).

Justices, judges and cleared court personnel shall not disclose classified information to anyone who does not have a security clearance and who does not require the information in the discharge of an official function. However, nothing contained in these procedures shall preclude a judge from discharging his official duties, including giving appropriate instructions to the jury.

Any problem of security involving court personnel or persons acting for the court shall be referred to the court for appropriate action.

5. Persons Acting for the Defendant. The government may obtain information by any lawful means concerning the trustworthiness of persons associated with the defense and may bring such information to the attention of the court for the court's consideration in framing an appropriate protective order pursuant to Section 3 of the Act.

6. Jury. Nothing contained in these procedures shall be construed to require an investigation or security clearance of the members of the jury or interfere with the functions of a jury, including access to classified information introduced as evidence in the trial of a case.

After a verdict has been rendered by a jury, the trial judge should consider a government request for a cautionary instruction to jurors regarding the release or disclosure

of classified information contained in documents they have reviewed during the trial.

7. Custody and Storage of Classified Materials.

a. Materials Covered. These security procedures apply to all papers, documents, motions, pleadings, briefs, notes, records of statements involving classified information, notes relating to classified information taken during *in camera* proceedings, orders, affidavits, transcripts, untranscribed notes of a court reporter, magnetic recordings, or any other submissions or records which contain classified information as the term is defined in Section 1(a) of the Act, and which are in the custody of the court. This includes, but is not limited to (1) any motion made in connection with a pretrial conference held pursuant to Section 2 of the Act, (2) written statements submitted by the United States pursuant to Section 4 of the Act, (3) any written statement or written notice submitted to the court by the defendant pursuant to Section 5(a) of the Act, (4) any petition or written motion made pursuant to section 6 of the Act, (5) any description of, or reference to classified information contained in papers filed in an appeal, pursuant to Section 7 of the Act and (6) any written statement provided by the United States or by the defendant pursuant to Section 8(c) of the Act.

b. Safekeeping. Classified information submitted to the court shall be placed in the custody of the court security officer who shall be responsible for its safekeeping. When not in use, the court security officer shall store all classified materials in a safe or safe-type steel file container with built-in, dial-type, three position, changeable combinations which conform to the General Services Administration standards for security containers. Classified information shall be segregated from other information unrelated to the case at hand by securing it in a separate security container. If the court does not possess a storage container which meets the required standards, the necessary storage con-

tainer or containers are to be supplied to the court on a temporary basis by the appropriate Executive Branch agency as determined by the Department of Justice Security Officer. Only the court security officer and alternate court security officer(s) shall have access to the combination and the contents of the container unless the court, after consultation with the security officer, determines that a cleared person other than the court security officer may also have access.

For other than temporary storage (*e.g.*, brief court recess), the court security officer shall insure that the storage area in which these containers shall be located meets Executive Branch standards applicable to the level and category of classified information involved. The secure storage area may be located within either the Federal courthouse or the facilities of another United States Government agency.

c. Transmittal of Classified Information. During the pendency of a trial or appeal, classified materials stored in the facilities of another United States Government agency shall be transmitted in the manner prescribed by the Executive Branch security regulations applicable to the level and category of classified information involved. A trust receipt shall accompany all classified materials transmitted and shall be signed by the recipient and returned to the court security officer.

8. Operating Routine.

a. Access to Court Records. Court personnel shall have access to court records only as authorized. Access to classified information by court personnel shall be limited to the minimum number of cleared persons necessary for operating purposes. Access includes presence at an *in camera* hearing or any other proceeding during which classified information may be disclosed. Arrangements for access to classified information in the custody of the court by court personnel and persons acting for the defense shall

be approved in advance by the court, which may issue a protective order concerning such access.

Except as otherwise authorized by a protective order, persons acting for the defendant will not be given custody of classified information provided by the government. They may, at the discretion of the court, be afforded access to classified information provided by the government in secure quarters which have been approved in accordance with § 3 of these procedures, but such classified information shall remain in the control of the court security officer.

b. Telephone Security. Classified information shall not be discussed over standard commercial telephone instruments or office intercommunication systems.

c. Disposal of Classified Material. The court security officer shall be responsible for the secure disposal of all classified materials which are not otherwise required to be retained.

9. Records Security.

a. Classification Markings. The court security officer, after consultation with tile attorney for the government, shall be responsible for the marking of all court documents containing classified information with the appropriate level of classification and for indicating thereon any special access controls that also appear on the face of the document from which the classified information was obtained or that are otherwise applicable.

Every document filed by the defendant in the case shall be filed under seal and promptly turned over to the court security officer. The court security officer shall promptly examine the document and, in consultation with the attorney for the government or representative of the appropriate agency, determine whether it contains classified information. If it is determined that the document does contain classified information, the court security officer

shall ensure that it is marked with the appropriate classification marking. If it is determined that the document does not contain classified information, it shall be unsealed and placed in the public record. Upon the request of the government, the court may direct that any document containing classified information shall thereafter be protected in accordance with § 7 of these procedures.

b. Accountability System. The court security officer shall be responsible for the establishment and maintenance of a control and accountability system for all classified information received by or transmitted from the court.

10. Transmittal of the Record on Appeal. The record on appeal, or any portion thereof, which contains classified information shall be transmitted to the court of appeals or to the Supreme Court in the manner specified in § 7(c) of these procedures.

11. Final Disposition. Within a reasonable time after all proceedings in the case have been concluded, including appeals, the court shall release to the court security officer all materials containing classified information. The court security officer shall then transmit them to the Department of Justice Security Officer who shall consult with the originating agency to determine the appropriate disposition of such materials. Upon the motion of the government, the court may order the return of the classified documents and materials to the department or agency which originated them. The materials shall be transmitted in the manner specified in § 7(c) of these procedures and shall be accompanied by the appropriate accountability records required by § 9(b) of these procedures.

12. Expenses. Expenses of the United States Government which arise in connection with the implementation of these procedures shall be borne by the Department of Justice or other appropriate Executive Branch agency.

13. Interpretation. Any question concerning the interpretation of any security requirement contained in these procedures shall he resolved by the court in consultation with the Department of Justice Security Officer and the appropriate Executive Branch agency security officer.

14. Term. These procedures shall remain in effect until modified in writing by The Chief Justice after consultation with the Attorney General of the United States, the Director of Central Intelligence, and the Secretary of Defense.

15. Effective Date. These procedures shall become effective forty-five days after the date of submission to the appropriate Congressional Committees, as required by the Act.

Issued this 12th day of February, 1981, after taking into account the views of the Attorney General of the United States, the Director of Central Intelligence, and the Secretary of Defense, as required by law.

/s/ WARREN E. BURGER
Chief Justice of the
United States

§ 9A. Coordination requirements relating to the prosecution of cases involving classified information

(a) Briefings required.—The Assistant Attorney General for the Criminal Division and the appropriate United States attorney, or the designee of such officials, shall provide briefings to the senior agency official, or the designee of such official, with respect to any case involving classified information that originated in the agency of such senior agency official.

(b) Timing of briefings.—Briefings under subsection (a) with respect to a case shall occur—

(1) as soon as practicable after the Department of Justice and the United States attorney concerned determine that a prosecution or potential prosecution could result: and

(2) at such other times thereafter as are necessary to keep the senior agency official concerned fully and currently informed of the status of the prosecution.

(c) Senior agency official defined.—In this section, the term "senior agency official" has the meaning given that term in section 1.1 of Executive Order No. 12958.

(Pub.L. 96-456, § 9A, as added Pub.L. 106-567, Title VI, § 607, Dec. 27, 2000, 114 Stat. 2855.)

§ 10. Identification of information related to national defense

In any prosecution in which the United States must establish that material relates to the national defense or constitutes classified information, the United States shall notify the defendant, within the time before trial specified by the court, of the portions of the material that it reasonably expects to rely upon to establish the national defense or classified information element of the offense.

(Pub.L. 96-456. § 10, Oct. 15, 1980, 94 Stat. 2029.)

§ 11. Amendments to Act

Sections I through 10 of this Act may be amended as provided in section 2076, Title 28, United States Code.

(Pub.L. 96-156, § 11, Oct. 15, 1980, 94 Stat. 2029.)

HISTORICAL AND STATUTORY NOTES

References in Text

This Act, referred to in catchline, is Pub.L. 96-456, Oct. 15, 1980, 94 Stat. 2025, known as the "Classified Information Procedures Act".

§ 12. Attorney General guidelines

(a) Within one hundred and eighty days of enactment of this Act, the Attorney General shall issue guidelines specifying the factors to be used by the Department of Justice in rendering a decision whether to prosecute a violation of Federal law in which, in the judgment of the Attorney General, there is a possibility that classified information will be revealed. Such guidelines shall be transmitted to the appropriate committees of Congress.

(b) When the Department of Justice decides not to prosecute a violation of Federal law pursuant to subsection (a), an appropriate official of the Department of Justice shall prepare written findings detailing the reasons for the decision not to prosecute. The findings shall include—

(1) the intelligence information which the Department of Justice officials believe might be disclosed,

(2) the purpose for which the information might be disclosed,

(3) the probability that the information would be disclosed, and

(4) the possible consequences such disclosure would have on the national security.

(Pub.L. 96-456, § 12. Oct. 15, 1980, 94 Stat. 2029.)

HISTORICAL AND STATUTORY NOTES

References in Text

The enactment of this Act, referred to in subsec. (a), means Oct. 15, 1980.

§ 13. Reports to Congress

(a) Consistent with applicable authorities and duties, including those conferred by the Constitution upon the executive and legislative branches, the Attorney General shall report orally or in writing semiannually to the Permanent Select Committee on Intelligence of the United States House of Representatives, the Select Committee on Intelligence of the United States Senate, and the chairmen and ranking minority members of the Committees on the Judiciary of the Senate and House of Representatives on all cases where a decision not to prosecute a violation of Federal law pursuant to section 12(a) has been made.

(b) The Attorney General shall deliver to the appropriate committees of Congress a report concerning the operation and effectiveness of this Act and including suggested amendments to this Act. For the first three years this Act is in effect, there shall be a report each year. After three years, such reports shall be delivered as necessary.

(Pub.L. 96-456, § 13, Oct. 15, 1980, 94 Stat. 2030.)

HISTORICAL AND STATUTORY NOTES

References in Text

This Act, referred to in subsec. (b), is Pub.L. 96-456, Oct. 15, 1980, 94 Stat. 2025, known as the "Classified Information Procedures Act".

§ 14. Functions of Attorney General exercised by Deputy Attorney General, the Associate Attorney General, or designated Assistant Attorney General

The functions and duties of the Attorney General under this Act may be exercised by the Deputy Attorney General, the Associate Attorney General, or by an Assistant Attorney General designated by the Attorney General for such purpose and may not be delegated to any other official.

(Pub.L. 96-456, § 14, Oct. 15, 1980, 94 Stat. 2030; Pub.L. 100-690, Title VII, § 7020(g), Nov. 18, 1988, 102 Stat. 4396.)

HISTORICAL AND STATUTORY NOTES

References in Text

This Act, referred to in text, is known as the "Classified Information Procedures Act" and is classified as this appendix to Title 18.

§ 15. Effective date

The provisions of this Act shall become effective upon the date of the enactment of this Act, but shall not apply to any prosecution in which an indictment or information was filed before such date.

(Pub.L. 96-456, § 15, Oct. 15, 1980, 94 Stat. 2030.)

HISTORICAL AND STATUTORY NOTES

References in Text

This Act, referred to in text, is Pub.L. 96-456, Oct. 15, 1980, 94 Stat. 2025, known as the "Classified Information Procedures Act".

The date of the enactment of this Act, referred to in text, means Oct. 15, 1980.

§ 16. Short title

That this Act may be cited as the "Classified Information Procedures Act".

(Pub.L. 96-456, § 16, Oct. 15, 1980, 94 Stat. 2031.)